

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1355 Department of Environmental Protection
SPONSOR(S): General Government Policy Council, Government Accountability Act, Mayfield and others
TIED BILLS: IDEN./SIM. BILLS: SB 2636

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Rows include Government Accountability Act Council, Agriculture & Natural Resources Policy Committee, General Government Policy Council, Natural Resources Appropriations Committee.

SUMMARY ANALYSIS

CS/CS/HB 1355 provides the Legislature’s findings and declarations regarding its investment in and management of conservation lands. The bill directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a study of the state agencies and public entities currently involved in land management to determine the most efficient means to restructure the state’s land acquisition and land management functions. OPPAGA is directed to report its results to the Legislature no later than December 1, 2009.

The bill requires the Department of Environmental Protection (DEP) to issue a request for proposals (RFP) or invitation to negotiate (ITO), subject to specific annual appropriations, for a 5-year public-private conservation land management demonstration pilot project. The DEP must work in consultation with the Fish and Wildlife Conservation Commission (FWCC) and the Department of Agriculture and Consumer Services (DACS) in issuing the RFPs/ITOs. The bill sets out information to be included in the RFP/ITO. The bill requires the contract to be awarded no later than December 31 of the year in which the appropriation is made, and the cost of the 5-year pilot project may not exceed \$4.5 million annually. Once awarded, the contractor must prepare a land management plan and submit the plan to the Acquisition and Restoration Council (ARC) as provided for in current law. The funds appropriated for the land management pilot project will be held in reserve until such time as DEP submits, and the LBC approves, a plan which includes a recommended RFP/ITO.

The bill provides for the DEP to hire a Forest Stewardship Council certified auditor to prepare and transmit, to the DEP, an annual management audit to ensure compliance with the standards of the Forest Stewardship Council and adherence to the management plan. The bill requires the ARC to review and evaluate the auditor’s report and provide comments. The auditor must submit a report of findings to the Governor, the President of the Senate, the Speaker of the House of Representatives, the ARC and the LBC.

The bill provides for any current full-time employees managing lands encompassed by the pilot project that are impacted to be given first preference for continued employment by the contractor. Additionally, the bill requires the state to make all reasonable efforts to find suitable job placements for employees who wish to remain in the state personnel system.

The bill provides that implementation of the pilot project is subject to specific annual appropriations. The bill takes effect July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

The Legislature provided \$4.5 million in the 2008 Appropriations Act<sup>1</sup> to fund a public-private land management demonstration pilot project (demonstration project). The demonstration project sought to have a private contractor conduct all land management activities, except for law enforcement, on approximately 200,000 acres of state conservation lands for a period of 5 years.

The purpose of the demonstration project was to determine the cost effectiveness of land management activities conducted by a private entity compared to those conducted by the state. A similar project was conducted by the FWCC on a smaller scale, in an area known as Snipe Island. This project demonstrated that both the state land managers and private land managers implemented cost effective techniques on different activities. In renewing the Snipe Island contract, FWCC bundled services in a manner it believed maximized the benefit of outsourcing land management activities.

The DEP, in consultation with the FWCC and the DACS, issued a Request for Proposals (RFP) on October 1, 2008. The one proposal received was deemed inadequate and rejected, and the RFP was withdrawn.

According to the James Madison Institute<sup>2</sup> (JMI), "...failure to find an acceptable bidder was not due to a lack of interest, but rather the land management firms that had an interest in the job decided it would not be profitable." The JMI concluded, the RFP:

- required a number of cumbersome activities for compliance,
- contained provisions that were open-ended,
- included reporting requirements which were burdensome, and
- allowed the State to terminate the contract at anytime without cause.

##### **Effects of Proposed Changes**

CS/CS/HB 1355 provides for extensive legislative findings with regard to land management. The bill declares that land acquisition programs have provided tremendous financial resources for purchasing environmentally significant lands to protect those lands from imminent development or alteration, thereby ensuring present and future generations' access to important waterways, open spaces, and

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<sup>1</sup> HB 5001, Chapter 2008-152, L.O.F., Section 1824

<sup>2</sup> Randall G Holcombe, *Creating a Public/Private Partnership of Florida's Conservation Land Management*, The James Madison Institute Backgrounder, Number 59, March 2009.

recreation and conservation lands. It specifies that, over the past 30 years, the state has invested over \$6 billion to conserve 3.8 million acres of environmentally sensitive land, and that land management expenditures have increased to \$215 million or \$66 per acre.

The bill cites a report<sup>3</sup> stating the current level of land management funding is insufficient to provide for the full funding of land management needs and concludes that if the state is to achieve the full benefits of its investment of public dollars in conservation lands, it must manage these lands as effectively and efficiently as possible. It finds that, given the limited financial resources to fund competing priorities and increasing funding needs to manage public lands, the state cannot afford to fund unnecessary duplicative management functions in multiple state agencies and, therefore, declares that a privatization pilot program for land management would allow the Legislature to better evaluate the effectiveness and efficiency of the state's land management activities by identifying and achieving cost efficiencies and reductions in administrative and operating costs, and reducing duplication.

The bill directs the OPAGGA to conduct a study of DACS, DEP, FWCC and any related law enforcement positions to determine the most efficient means of centralizing the land acquisition and land management activities of the state. The study is to be submitted to the President of the Senate and the Speaker of the House of Representatives by December 1, 2009.

The bill requires the Department of Environmental Protection (DEP) to issue a request for proposals (RFP) or invitation to negotiate (ITO), subject to specific annual appropriations, for a 5-year public-private conservation land management demonstration pilot project. The pilot project area shall consist of no more than 200,000 acres of existing non-submerged conservation lands, where the primary focus is not on developed recreation. The bill requires that, to the maximum extent practicable, the project area be proportionately distributed across lands currently managed by the DEP, FWCC, and DACS and be located within a reasonable proximity to each other.

The DEP must work in consultation with the Fish and Wildlife Conservation Commission (FWCC) and the Department of Agriculture and Consumer Services (DACS) in issuing the RFPs/ITOs. The bill sets out information to be included in the RFP/ITO. The bill requires the contract to be awarded no later than December 31 of the year in which the appropriation is made, and the cost of the 5-year pilot project may not exceed \$4.5 million annually. Once awarded, the contractor must prepare a land management plan and submit the plan to the ARC pursuant to current law. The funds appropriated for the land management pilot project will be held in reserve until such time as DEP submits, and the LBC approves, a plan which includes a recommended RFP/ITO. The contractor will be responsible for all land management activities except for law enforcement, wildfire suppression, derelict vessel removal, manatee surveys, water sampling unless required for potable water sources, or any other regulatory activity not specifically related to the management of state conservation lands.

The bill provides for the DEP to hire a Forest Stewardship Council (FSC) certified auditor to prepare and transmit, to the DEP, an annual management audit to ensure compliance with the standards of the Forest Stewardship Council and adherence to the management plan. The audit shall also compare the pilot project activities and results to those of similar state lands and provide recommendations to the DEP to more effectively manage state lands and obtain FSC certification for state lands. The bill requires the ARC to review and evaluate the auditor's report and provide comments. The auditor must submit a report of findings to the Governor, the President of the Senate, the Speaker of the House of Representatives, the ARC and the LBC.

The bill provides for any current full-time employees managing lands encompassed by the pilot project that are impacted to be given first preference for continued employment by the contractor. Additionally, the bill requires the state to make all reasonable efforts to find suitable job placements for employees who wish to remain in the state personnel system.

The bill provides that implementation of the pilot project is subject to specific annual appropriations. The bill takes effect July 1, 2009.

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<sup>3</sup> Land Management Uniform Accounting Council, October 2008 report

**B. SECTION DIRECTORY:**

**Section 1:** Provides findings and declarations by the Legislature.

**Section 2:** Directs the OPPAGA to conduct a study determining the most efficient means to restructure the DEP's land acquisition and land management functions.

**Section 3:** Requires the DEP to issue a RFP/ITO for a 5-year public-private land management demonstration pilot project on state-managed conservation lands.

**Section 4:** Provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None

2. Expenditures:

See "Fiscal Comments" section below.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Unknown. If funds are appropriated to implement the bill, funding allocated to private land management activities may increase. The impact may be the result of allocation decisions made by the state land management agencies (DEP, DACS, and FWCC).

**D. FISCAL COMMENTS:**

If specific annual appropriations are made, the cost of the pilot project may not exceed \$4.5 million annually. And, if appropriations are made, DEP will be required to hire a certified Forest Stewardship Council auditor to conduct a study of the pilot project on conservation lands. The cost of an audit is unknown and will be based on the scope of the audit.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 17, 2009, in the Government Accountability Act Council, Representative Mayfield introduced, and the council adopted, a strike-all amendment to HB 1355. The amendment removed the portions of the original bill relating to the transfer of the Office of Coastal and Aquatic Managed Areas (CAMA) from DEP to FWC, and amended the remaining portions of the original bill that related to land management.

The amendment directs OPPAGA to conduct a study of DACS, DEP, FWC and any related law enforcement positions to determine and report on the most efficient means of centralizing land management activities of the state. In addition, the amendment provided a \$4.5 million funding cap on each public-private land management demonstration pilot project proposed and contracted by DEP, identified specific lands where the pilot project on conservation lands may be conducted, and eliminated certain land management activities required of the private contractor.

On April 20, 2009, the General Government Policy Council adopted a strike-all amendment and two amendments to the strike-all amendment for CS/HB 1355. The strike-all amendment differs from the bill in that:

- The legislative findings are amended to reflect the intent of the strike-all amendment.
- The strike-all amendment provides for only one public-private pilot project relating to management of state conservation lands, subject to specific annual appropriations,. The scope of the lands to be included in the pilot project will include no more than 200,000 acres consisting of existing non-submerged conservation lands, where the primary focus is not on developed recreation. The strike-all amendment calls for the project area to be proportionately distributed across lands currently managed by DEP, FWCC, and DACS and be located within reasonable proximity to each other.
- The strike-all amendment provides for the contract to be awarded no later than December 31, 2009, subject to specific annual appropriations.

The first amendment to the strike-all amendment provides that any current full-time employee managing lands encompassed by the pilot project that is directly impacted will be given first preference for continued employment by the contractor. Additionally, the amendment provides for the state to make all reasonable efforts to find suitable job placements for employees who wish to remain within the state personnel system.

The second amendment to the strike-all amendment clarified that the contract for land management must be awarded by December 31 of the year in which the appropriation is made. The amendment had referred to the contract being awarded by December 31, 2009.